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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

INCREDIBLE AUTO SALES, LLC,	)	Bankruptcy No. 06-60855-RBK
	)	
Debtor.	)	<b>HMFC'S JOINDER IN U.S.</b>
	)	<b>TRUSTEE'S MOTION TO</b>
	)	<b>CONVERT CASE</b>
	)	<b>AND NOTICE</b>
	)	

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Hyundai Motor Finance Company ("HMFC") hereby joins in the U.S. Trustee's Motion to Convert (dkt. 167) for the reasons stated therein and for the further reason that HMFC has been unable to obtain critical details concerning the ownership, operation, and finances of the Debtor. HMFC joins in this motion without waiving its pending motions for relief from stay and, alternatively, for appointment of a trustee.

1. Every single witness in this case has exercised Fifth Amendment rights and has refused to answer questions under oath concerning Debtor's business. HMFC has obtained this Court's Orders for 2004 examinations of the four individuals with the most personal knowledge of Debtor's business: R. Nick Gutierrez (80% owner); Jody Stephens (Office Manager and 10% owner); Lalonna Seymour (Title Clerk); and Krista Davis (former salesperson, transferred post-

petition from Incredible Kia to Incredible Chevrolet). All four individuals have worked for Debtor for years and have the critical facts of this case.

A. Nick Gutierrez continues to own the vast majority of the Debtor and is believed to still control the Debtor. Despite this Court's Order (dkt. 159) directing that "R. Nick Gutierrez shall not participate in the management of the Debtor during the pendency of this case," Nick Gutierrez is believed to continue to actively participate in at least those decisions concerning the potential sale of Debtor's business.

B. Jody Stephens has been Debtor's Office Manager for years, during which time Debtor sold vehicles out of trust, falsified certificates of title, double-floored vehicles, fraudulently failed to pay trade-in vehicle liens, falsified funding information, floored vehicles that Debtor did not possess, and engaged in numerous related-party transactions, both pre-petition and post-petition, among numerous other transgressions. Jody Stephens remains employed as Debtor's Office Manager today.

C. Lalonna Seymour's signature appears on numerous photocopies of certificates of title that have since been proven to be falsified. She has knowledge of pre-petition and post-petition operations and finances. She remains employed by Debtor today, presumably in the same role as Title Clerk that she has held for years.

D. Krista Davis was formerly a salesperson for Debtor, but was transferred to Debtor's sister corporation, Incredible Chevrolet, post-petition. Her name appears on documents for post-petition, related-party transactions between Incredible Kia and Incredible Chevrolet. Additionally, during this Court's hearing on use of cash collateral on November 6, 2006, Nick Gutierrez testified that Krista Davis had previously falsified sale documents and was removed

from Debtor's employ for those reasons. In fact, Krista Davis remains employed at the same lot previously occupied by Incredible Kia, which now is run by Incredible Chevrolet.

2. The above-named individuals not only have information about Debtor's pre-petition operations, but they also remain involved in Debtor's business today. Debtor has continued to permit these individuals to run its business. They make decisions concerning HMFC's cash and other collateral on a daily basis, yet they refuse to discuss Debtor's operation for fear that their testimony will lead to their criminal conviction. Cause exists to convert this case to a Chapter 7.

#### **NOTICE**

**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:**

#### **NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time, and location of the hearing can be obtained from the Clerk of Court or from the Court's website at [www.mtb.uscourts.gov](http://www.mtb.uscourts.gov). In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.**

**If you fail to file a written response to the above Motion with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all**

**applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.**

Dated this 4th day of January, 2007.

/s/ Shane P. Coleman  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of January, 2007, I served a true and correct copy of the foregoing, addressed as follows and by the method shown below:

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